

1 **JACKSON WHITE**  
2 **ATTORNEYS AT LAW**  
3 *A Professional Corporation*

4 40 North Center, Suite 200  
5 Mesa, Arizona 85201  
6 (480) 464-1111  
7 Attorneys for Debtors Kent & Dorothy McClure  
8 By: John N. Skiba, No. 022699

9 **IN THE UNITED STATES BANKRUPTCY COURT**  
10 **FOR THE DISTRICT OF ARIZONA**

11 In re:

12  
13 Kent I. McClure,  
14 Dorothy McClure,

15 Debtors.

16  
17 Kent I. McClure,  
18 Dorothy McClure,

19 Plaintiffs,

20 vs.

21 Central Mortgage Company., its  
22 assignees and/or successors ,

23 Defendants.  
24  
25  
26  
27  
28

Chapter 13 Proceedings

Case No.: 2:09-bk-12971-CGC

Adv. No.: 2:09-ap-01456-CGC

**COMPLAINT OF DEBTORS TO  
DETERMINE THE VALUE OF  
SECURITY AND CREDITOR'S  
ALLOWED SECURED CLAIM**

Property Address:

3031 West Aguila Drive  
Thatcher, Arizona 85552

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1           5.       The 341(a) meeting of creditors was held on July 22, 2009, in Phoenix,  
2 Arizona.

3           6.       The Defendant has filed no objection to confirmation of the plan in this  
4 case.  
5

6           7.       The Defendant is, upon information and belief, an entity engaged in the  
7 business of residential lending in the State of Arizona, and which maintains a principal  
8 place of business in some state other than the State of Arizona.  
9

10                               **Factual Allegations**

11           8.       In the schedules filed with the petition in this case and on the master  
12 mailing matrix filed with the Clerk of this Court, a debt was listed in favor of Central  
13 Mortgage Company (hereinafter “CMC”) for the second deed of trust on the residential  
14 real estate of the debtors. The debtors believed and therefore alleged in their petition and  
15 schedules that there was no equity in their residential real estate to which the second  
16 mortgage could secure at the time the petition was filed, therefore, provided for the claim  
17 to be paid as an unsecured claim under the terms of the confirmed plan.  
18  
19

20           9.       The Plaintiffs allege that at the time they filed their bankruptcy petition and  
21 at the present time the value of their interest in the said residential real estate was and is  
22 approximately \$170,750.00.  
23

24           10.      The Plaintiffs’ interest in the real estate is subject to a first lien arising out  
25 of a mortgage in favor of Wells Fargo Home Mortgage (hereinafter “Wells Fargo”) in the  
26 amount of \$179,200.00.  
27  
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1           11.    The Plaintiffs' interest in their residential real estate is subject to a second  
2   lien arising out of a mortgage in favor of CMC in the amount of \$23,492.00.

3           12.    The lien securing the second mortgage of CMC is junior to the first  
4   mortgage listed above as owing to Countrywide.

5           13.    The Plaintiffs allege that there was no equity in their home and therefore  
6   the Defendant has no secured interest for the loan secured by the second deed of trust on  
7   the subject real estate.  
8

9           14.    Pursuant to 11 U.S.C. Section 506(a), the Defendant has no allowable  
10   secured claim regarding the claim for the second mortgage loan on the subject real estate.  
11

12           15.    Any timely filed claim of the Defendants for the second mortgage loan is  
13   allowable only as an unsecured claim and to the extent that no such claim was filed the  
14   Defendant has no claim against this estate.  
15

16           **WHEREFORE**, the Plaintiffs respectfully pray of the Court as follows:

17           A.    That this Court determine that the Defendant has no secured interest for the  
18   loan secured by the second deed of trust on the residential real estate of the Debtors;  
19

20           B.    That this Court order the Defendant to cancel the second mortgage lien on  
21   the residential real estate of the debtors pursuant to 11 U.S.C. Section 506(d), and deliver  
22   the same to the attorney for the debtors;  
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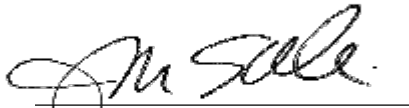
24           C.    That this Court direct the Trustee that any timely filed proof of claim of the  
25   Defendant for the second mortgage lien be treated as an unsecured claim under the plan;  
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27           D.    That the attorney for the Plaintiffs be awarded reasonable legal fees;  
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1 E. That the Plaintiffs have such other and further relief as to the Court may  
2 seem just and proper.

3 DATED this 3<sup>rd</sup> day of November, 2009.

4 JACKSON WHITE, P.C.

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8 John N. Skiba  
9 Attorney for Debtors  
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